



A Comparative Study of Public Participation Instruments in Determining the Content of the Constitution

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Abstract

The process by which a constitution is created or modified, as well as its substantive substance, are the key to its legitimacy; The process of preparing the draft of constitution can not only give it democratic legitimacy, but it can also increase public awareness of it, and create the expectation that the constitution is obeyed by the whole community. Therefore, a successful constructive process, which provides the basis for future adherence to the text of a constitution, requires that the relevant parts and organizations of society actively participate in the various stages of it, as far as possible. The instruments of participation are numerous, and there is no single, universal and integrated method of involving public participation in the preparation of the legal content. Legal systems that are highly prioritized in consultation usually use a combination of ways to ensure that many are given the opportunity for participation. Public invitations may be called for to submit written ideas, or legal authorities ordered to attend public meetings, or to be informed of public ideas by publication of a questionnaire and survey. The choice of a counselling method in each case will depend on different circumstances. Though public participation in the democratization of the process of drafting the constitution is useful, there are some concerns to be answered in theory and practice. The existence of these concerns and challenges should not hamper the execution of public participation processes; they must lead to further research of their functioning and importance, and to further development of effective participation patterns. The necessity of explicit laws to enforce public participation in the determination of the substance of a law is the first step to ensure participation and increase the legitimacy of the law at the level of legal systems. In such laws, transparency is a key element. Once the principle of participation has been legally accepted, the process, partnerships and other conditions must be precisely clarified and by law, and in enforcing the law, the plans, timings and targets must be widely disseminated in order to people know



what and when should to expect; this must include information on the means of public participation, and, most importantly, what is done with public data. In this way, each constituent institution must be obliged to submit a final report at the end of a process, containing all aspects of the participation process, including how to use public information and how to make decisions. In cases where public feedback is not included in the draft proposal, the report must explain why. Also, in order to making this participation real and meaningful, it is necessary to make a certain obligation in the established laws for the purpose of public education, so that the responsible bodies are obliged to provide an opportunity for participation in various ways. Following the Islamic Revolution of Iran, a new constitution which was a substitute for Persian Constitution of 1906 (Qānun-e Asāsi-ye Mashrute) was set forth, and a committee of enquiry called the Assembly of Experts was appointed, and the proposed draft of constitution was then put to public vote. At the same time, the necessity of using public opinion on the proposed draft of constitution was emphasized in the following phrases in the letter written by Imam Khomeini to the Prime Minister of the interim Government: “The draft of constitution which is in the process of being completed and approved by the Revolution Council, shall be completed and given to the public mind as soon as possible, that all theoreticians and all classes of the nation may submit their proposals and views on it within the time limit, and then according to the decision taken by consultation with the Revolution Council and the Government, the people of each province and each religious minority shall elect their representatives, at the numbers appointed by the Revolution Council and the Government, and that the assembly composed of representatives of the people shall finally consider and prepare the principles of the constitution. Despite this emphasis, there is no obligation in the final drafting of the constitution as a part of the law. Though the general concept of participation in public administration has been variously noticed in the different principles of constitution, especially in Article 6 (Public Administration by popular vote), but that when the texts of the constitution were passed, participation in the preparation of the texts of the law was not a question. Nevertheless, according to the general policies of regulation system (2019), public participation in the lawmaking is stipulated as “drawing the utmost participation of the people, donors and legal institutions, people, professional institutions in the legal process”

This participation seems to mean, in fact, to hear the public opinion in the preparation of the Law. Given that the general policies of government is a highly constitutional and binding convention in the legal order of Iran, and that the strict implementation of this law is emphasized in principle 110 (2) of constitution, it may be argued that the primary legal capacity for the achievement of public participation in the preparation of the constitution has been created; though the



need for more explicit rules to determine in this subject, and providing for the preparation of such participation is an inevitable necessity by foreseeing the means of participation and establishing the responsible institution for carrying out such participation.

Keywords: Constitution, drafting of Constitution, the content of law, public participation, democracy.



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